

Message

From: MacKnight, Evelyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3ED076E9D00A4845AEF8B34285FB42FA-EMACKNIG]
Sent: 5/23/2018 9:57:04 PM
To: McManus, Catharine [mcmanus.catharine@epa.gov]; Lueckenhoff, Dominique [Lueckenhoff.Dominique@epa.gov]
CC: Sincock, Jennifer [Sincock.Jennifer@epa.gov]; Adair, Jillian [adair.jillian@epa.gov]; Kelly Gable [Gable.Kelly@epa.gov]; Stefania Shamet [Shamet.Stefania@epa.gov]; Peck, Michelle [Peck.Michelle@epa.gov]
Subject: RE: Trash talking points for Cosmo with DC and MD

Ex. 5 Deliberative Process - Attorney Client - Attorney Work Product

Background

On March 30, 2018, the D.C. District Court vacated EPA's 2010 approval of the Anacostia River Trash TMDL developed jointly by D.C. and Maryland. The TMDL was expressed as pounds of trash to be removed or prevented from entering the River each year, based on interpretation of MD and DC's "free from" narrative WQS. Consistent with D.C. Circuit Court precedent in the 2006 TMDL "daily" load case, the court held that the Trash TMDL was unlawful because it was not expressed as the "maximum . . . load" that may enter the river. Instead, the TMDL was expressed as the "minimum amount of trash that must be removed" or prevented from entering the river. Although the district court vacated EPA's 2010 approval of the Anacostia River Trash TMDL, the court stayed vacatur of the TMDL and declared that – until replaced – it has "the same legal effect" as before the decision. In keeping with DOJ, OGC, OW, and R3 staff recommendations, on April 20th EPA ultimately informed DOJ of the Agency's decision to not appeal. The Court ordered EPA to submit a status report by July 2, 2018 describing EPA's actions to comply with its Order to either "cooperate with DOEE and MDE to develop a new trash TMDL" or disapprove it "and establish a federal TMDL within thirty days."